

LAKE COUNTY BOARD of ADJUSTMENT
March 13, 2019
Lake County Courthouse Commissioners Office (Rm 211)
Meeting Minutes

MEMBERS PRESENT: Don Patterson, Mary Jensen, Mike McKee

STAFF PRESENT: Jacob Feistner, Rob Edington, Tiffani Murphy, Lita Fonda

Don Patterson called the meeting to order at 3:30 pm

FINLEY POINT REAL ESTATE LLC VARIANCE—FINLEY POINT (3:31 pm)

Rob Edington presented the staff report. (See attachments to minutes in the March 2019 meeting file for staff report.) He noted that the agent, JaJa Cardiff was here. He read three suggested modifications to the findings provided by Board member Steve Rosso, who was unable to be present. (See attachments to minutes in the March 2019 meeting file for written comments.)

JaJa Cardiff had no comments to add.

Public comment opened: No one present to comment. *Public comment closed.*

Mary thought Steve's additions [to the findings] fit well.

Motion made by Mary Jensen, and seconded by Mike McKee, to approve the variance as submitted [in the staff report] with the additions of Steve Rosso's comments. Motion carried, all in favor.

In response to Mike's query, JaJa updated the Board that a letter had been sent to the owners of the [adjacent] triangular property via Smith Real Estate with recommendations for a boundary line adjustment or purchase of that property. Four siblings in four different states owned that adjacent property.

ZIPP CONDITIONAL USE—EAST SHORE (3:40 pm)

Rob Edington mentioned the site visit was postponed due to snow. He introduced Gene and Kimberly Zipp and presented the staff report. (See attachments to minutes in the March 2019 meeting file for staff report.) On pg. 2 in item #4, it was 80 feet to the center line. This particular right of way was wider than many other locations. He thought this was due in part to the steep stopes. On pg. 3 in item #7, not all proposed slope disturbance was on slopes greater than 25%. Staff assumed that all of the slopes were greater than 25% in order to estimate the worst case or maximum disturbance to ensure that the applicant would not exceed his approval. In item #8, he corrected 'plans' to 'plants' in the last full line.

Don asked if the MDT (MT Dept. of Transportation) comment mentioned in item 9 on pg. 3 had been done. Rob said it hadn't been completed. This would be a condition of approval prior to the zoning conformance being issued. It was difficult to tell under the snow but you

could tell in the photos from the applicant, such as in attachment #5, that there were a lot of boulders and rocks. He didn't anticipate slope stability issues but that needed to be confirmed. Planning staff could not make that determination.

Rob read comments from absent Board member Steve Rosso, which included concern and questions on the design and planning for the disturbed area, a suggested additional condition to address the concern, a reminder for the applicant regarding vegetation and additives, and 3 suggested modifications for the findings. (See attachments to minutes in the March 2019 meeting file for written comments.) Rob noted suggested modification #2 might be in potential conflict. The applicant had applied for a lakeshore construction permit and it wasn't uncommon for the Commissioners to approve equipment within the lakeshore protection zone. Due to the slopes, equipment would be accessing within that area. Required conditions included Best Management Practices. If this [suggested] condition was not in place [for the conditional use], the Planning staff might recommend approval to the Board of Lake County Commissioners that equipment could be within there as long as they implemented techniques that restored the shoreline, etcetera. He clarified at Don's request that Steve's comments were input for the Board to consider.

Applicant Gene Zipp said they were in agreement with the items discussed except the last input was a surprise. They met several times with Roberto Zavala of RKZ Excavation, who estimated about 400 yards of material would be excavated and moved. He relied on Roberto's expertise.

Public comment opened: None offered. *Public comment closed.*

Don asked what the Board thought about adding the 3 comments. Mike said he'd been by there often along the highway. He thought the Planning staff recommendations were appropriate, considering other similar excavations. It didn't seem out of the realm of ordinary for that area, and with consideration of the narrow space between the lake and highway, so he had trepidation with requiring a professional engineer to do a slope/cross-section type thing. He thought Roberto was well-recognized for work in that area and around the lake and was comfortable with that. Mary agreed. Mike felt assumptions were being made about sod or something other than natural grass and vegetation, and that natural vegetation was better than sod. Mary agreed. She thought this was straightforward. Don pointed to the 30 x 30 area, which was a lot of property. Mike asked if any of the rocks were decorative. Gene didn't think so. The challenge was that their easement was behind an existing structure so to bring in a 10-yard truck wasn't very feasible.

Motion made by Mike McKee, and seconded by Mary Jensen, to approve the conditional use in accordance with staff recommendations. Motion carried, all in favor.

FHLC LLC VARIANCE & CONDITIONAL USE—FINLEY POINT (4:08pm)

Tiffani Murphy presented the staff report. (See attachments to minutes in the March 2019 meeting file for staff report.) On pg. 5 in item #10, she noted that some information had changed since the staff report was written. A lakeshore application and fees had been submitted. They were still working on a vegetation and a stormwater plan so she still

recommended that condition of approval. On pg. 6 for item #14, she clarified that the Environmental Health Dept. hadn't known if the house had just been re-sided or if there were inside modifications, and wanted evidence or a written statement on exactly what had been done, and if there were additional bedrooms. She read comments from Board member Steve Rosso, who was unable to be present. He expressed concerns about after-the-fact projects and the owners and contractor/agents who were involved in the unpermitted work, suggested a reminder for the applicant regarding vegetation and additives and suggested an addition for condition #6 to require a professionally prepared vegetation plan. (See attachments to minutes in the March 2019 meeting file for written comments.)

Tiffani clarified for Mike that at present, neither a vegetation plan nor a stormwater plan had been submitted for this particular project. Those were suggested conditions of approval [to be met] before the after-the-fact zoning conformance was issued. The property wouldn't be considered in conformance until all of those materials were submitted and approved, and they got the zoning conformance permit. She confirmed for Mary that the applicants couldn't do anything until they got all of the permits, including an after-the-fact lakeshore permit. The vegetation and stormwater plans would need to [cover] everything from the lakeshore protection zone to the Finley Point Road area [for every disturbance]. Mike asked if having these plans in place was part of the process to get the actual permit, why weren't those plans part of the package that was presented to the Board in consideration of granting it.

Tiffani replied that often applicants wouldn't [include those for the Board] because the Board might modify or deny [the proposal], and having an engineer or a professional landscaper design those plans was expensive. Applicants often wouldn't hire someone until after they got Board approval. Don explained that [the proposal might] get approved but couldn't go forward until they did these other items. Tiffani added that the Board might put other conditions on [a proposal] and [the plan preparer] would adjust and design the plan based on all of the conditions that the Board put on a project. Mary noted they had to bring the plan to the Planning Dept. Jacob added that the applicants didn't always know [what plans might be needed]. For example, staff might require an engineered stormwater plan as part of their review and include it as a condition. The applicant didn't know that at the beginning and wouldn't have had one prepared. Staff do their review and think it's necessary so recommend it at a condition. That didn't give the applicant time to go out and prepare it. They might hope the Board won't think it's necessary and they won't have to do it. A lot of things were up in the air until they got their Board approval.

Agent Earl Hanneman of Carstens described that they'd been in contact with landscaping companies for cost estimates. They hadn't moved forward yet since they weren't sure of the direction they wanted to go. They needed to know what was wanted. Putting the slopes back as they were could be more harmful in the long run than leaving it as it was and using the terraces, pulling out the sod and putting in native grasses and a slight trench so stormwater stayed there and soaked down. The owner had said to please let [the Board] know that they were going to do what they had to do to make this right and get it in conformance. In the future, he might want to do some changes. If he didn't do it [properly now], he would get denied in the future.

Mike observed that the major problem here, other than not getting permits, was the paving of the road which contributed significantly to the erosion and the runoff. From the picture, it looked like they'd made improvements and attempts to mitigate the damage to this point. Mary thought it sounded like the owner did what he wanted until it got brought to his attention. She saw and agreed with some of the points that Steve made. This [owner] needed to follow the book. What happened if he didn't? Tiffani said the next steps if he didn't comply were down the legal chain with the attorney. They tried to avoid that when possible but couldn't always. She clarified that pulling out the drainpipe in one of the pictures was part of Presta, the next project [on the BOA agenda]. For this project, their stormwater plan needed to show what they planned to do with all of this. This project and the Presta project were side by side and tie in together.

Mary asked about who did the work. Tiffani replied the owner was working with a contractor. It was unclear who was to get the permits. Both were responsible. Ultimately the regulations held the landowner responsible.

Public comment: No public were present to comment.

Mary didn't see a way of taking any of this back. It would be a mess to remove it. She thought it had to be strictly enforced that he follow all of the rules and that nothing was started until all the 't's were crossed.

Motion made by Mary Jensen, and seconded by Mike McKee, to approve the conditional use and variance requests, accepting staff guidelines and requirements, which must be completed before any work can be done, plus accepting the staff report and findings of fact. Motion carried, all in favor. Tiffani and Lita asked for clarification on the motion regarding Steve's comments. Mike thought the comments emphasized the rules needed to be followed. Tiffani thought the change Steve had proposed was adding the words 'professionally prepared' in front of vegetation plan. Mike had no problem with that. Mary suggested adding that it be a licensed contractor. Jacob thought he was aiming for a landscape architect, who was professional in landscaping, not necessarily a registered contractor. Mike identified the big issue as the stormwater drainage and erosion, which was created by the paving of the previously graveled road. One comment was about professional design of the stormwater retention and drainage. He was more concerned about that than what was planted in the terracing. It could be looked at as two separate things.

Tiffani described that the vegetation was used as a stormwater management tool. The different types of vegetation greatly improved or could actually make a stormwater plan fall apart. That was one of the reasons they put so much emphasis on the vegetation in the 50-foot buffer. Jacob covered that the 50-foot vegetative buffer was also a requirement of the zoning. It was a very important component. He pointed to the bottom picture in the attachments, where [the land] had been scraped clean of vegetation. They needed to bring it back to having that vegetative buffer, which accomplished many things. Stormwater retention was one of those things. Mike concluded that this was incorporating a requirement for a professional landscaper to be involved in the design of the plan. Jacob thought Steve's suggested wording [to add 'professionally prepared' in front of 'vegetative plan' in the first sentence of condition

#6 on pg. 13] worked to get a good vegetative plan. Tiffani identified condition #8 as being on stormwater. Earl mentioned that, as they'd find out with the next item [on the agenda], most of that road had been tilted inward so it came down to the next [inaudible] that they were going to do, and they'd come up with a stormwater plan for that one.

Jacob observed that if you took the driveway out of the scenario, you had slopes over 25% with 2 feet of snow currently and all that water would go straight into the lake. It was important to address the driveway but also the sloped area. It was almost independent but at the same time they worked together. Mike verified with Earl that Carstens engineered the stormwater and the vegetation together. Earl added they were getting a vegetation professional, who would design the vegetation plan with Carstens' stormwater [plan] so it matched up and worked. They'd told the applicant up front what they would have to do and what was compliant, to clean up the mess. It had been very educational for the owner, who had come around to a point where he understood. They'd have to get rid of the grass and put in plants and a swale. They had to fix it so it worked, and make it compliant now if they wanted to do things in the future.

Tiffani added that any plans they submitted would have to be reviewed and approved by the Planning Dept. before they got their zoning conformance. It was a process. Mary checked that if they were permitted to do all of this, they'd have a year to do this. Did this mean all of the permits had to be in line and signed off before the year began? Jacob clarified that if the Board approved this, the applicants had one year in which to meet the Board's conditions of approval before they could get a zoning conformance. When the zoning conformance was issued, they had a year to do the work.

Lita restated the motion to verify she had it correctly: **Motion made by Mary Jensen, and seconded by Mike McKee, to approve the conditional use and variance requests, accepting the staff report and findings of fact, plus the added requirement for a professional landscaper per Steve Rosso's comment, with strict compliance to the guidelines and rules. Motion carried, all in favor.** Don, Mary and Mike confirmed that this captured the motion accurately, and confirmed that they were all in favor.

PRESTA CONDITIONAL USE—FINLEY POINT (4:45 pm)

Tiffani Murphy prefaced with a staff note describing how originally Jeremy Presta had Carstens develop a stormwater plan and submit it to Tiffani. When Jeremy submitted [his application], he'd gone a different way with his own plan but still incorporated the Carstens plan although he didn't have them as an agent. He was concerned about not having an agent to represent him when he read through the staff report, especially when he read through the conditions. Tiffani pointed to the email in which he appointed Carstens as his agent, so Earl Hanneman was also the Carstens agent representing the Prestas. She then presented the staff report. (See attachments to minutes in the March 2019 meeting file for staff report and for the handout of the email.) On pg. 5 for items #12 and #13, she indicated that since Carstens was now involved as agent, Earl did have comments to make on these. She presented comments from Board member Steve Rosso, who was unable to be present and whose comments echoed those for the last item with FHLC, LLC, including the addition [to condition #3] to require a professionally prepared vegetation plan. (See attachments to minutes in the March 2019

meeting file for written comments.) Jacob said there were at least 2 different callers when Mike asked about the original complaints. Tiffani observed that the building of the retaining walls could be seen from S. Finley Point Road.

Agent Earl Hanneman pointed to attachment 4 for the drawing of the stormwater [plan] and described the location of a tank that would hold the stormwater. Instead of going with an engineer, he suggested that Carstens would stake it as surveyors where the tank had to go, and where the line had to go. They would inspect to make sure it was being done properly and would sign off on it, as they would for a drainfield. They would make sure it was where it was supposed to be and that it was working properly. He thought the idea for an engineer was to make sure someone said this was done. An engineer would design it but if it wasn't put in the ground where it was supposed to be, who would know? With this solution, you had someone to hold accountable for the location. They'd explained this to Jeremy Presta when hired to represent him. They explained what he'd have to do and how it was going to have to be done and he agreed. They were willing to take on the mantle of making sure that this was done properly. They hoped to be retained for the revegetation and the rest, so they would know it got done right. Their plan [for the tank] would retain all of the water for the road. It would go underground and out from there, avoiding further erosion for the road. They would take some of the dips, make swales out of them and put the vegetation in them so the water could sit and percolate down. It was a simple plan, but not easy to implement once you started getting landscapers involved and so forth.

Mike asked for a simple clarification on geosynthetic reinforcement. Earl said this was something that Jeremy Presta had done and written in his letter [attachment 2, 3rd paragraph of 3rd page]. His understanding was this was a synthetic mesh net sort of like the weed mesh you might put in a garden. It was one big mat that kept the soil from pushing out [in a small area], so everything was being pushed at once.

Mike asked also for clarification on 'the burrito'. Earl referred to what he would call a half moon in a wastewater system. It had a dome. This one was long, on the order of 10 feet. The water came into a chamber and slowly soaked into the mantle. It was like a septic tank with no bottom and was made for stormwater.

Public comment: No public were present to comment.

Jacob pointed out that staff recommended an engineered stormwater plan, which he felt they should still do. The applicant was asking not to do that. He wanted to make sure the Board's recommendation was clear on whether they accepted the staff recommendation or if they were changing it. Mike asked for clarification on Carstens role. Weren't they an engineering firm? Earl replied they did not have an engineer on staff. Mike checked his proposal was to survey out to make sure where the 'burrito' got put. Earl said they figured out what the stormwater capacity would be, like they would for sanitation, and how big the 'burrito' should be to hold the water. It hadn't been engineered by a civil engineer. Mike asked what the difference was. Jacob supplied that the difference was that an engineer was qualified to determine whether or not the slope was going to fail when you put the stormwater from that driveway into the slope

right next to the house. Carstens could put it in the exact location that was on the map but they wouldn't certify whether or not it would fail. An engineer would.

Mary asked how the water was directed from the road into the 'burrito'. Earl described this. The road would have to be cut and a drain would be put in to catch the water. A grate would go over the top. It would hit there and go across into a pipe that would go into the holding tank/burrito. He saw what Jacob was saying. It was on the slope. Would that be too much weight if it filled up, and would it wash out? It was up to the Board whether or not they thought an engineer needed to do it.

Motion made by Mike McKee, and seconded by Mary Jensen, to approve the conditional use request in accordance with the staff recommendations (which would include the engineer's certification) accepting the staff report and findings of fact, plus the added requirement for a professional landscaper per Steve Rosso's comment, with strict compliance to the guidelines and rules. Motion carried, all in favor.

MINUTES - deferred

OTHER BUSINESS (5:12 pm)

None.

Don Patterson, chair, adjourned the meeting at 5:12 pm.